

The State of Tamil Nadu Vs. the Crompton Engineering Company (Madras) Limited

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Court : Chennai

Decided On : Jul-22-1976

Reported in : [1977]39STC260(Mad)

Judge : Ismail and ;Sethuraman, JJ.

Appeal No. : Tax Case No. 370 of 1971 (Revision No. 258 of 1971)

Appellant : The State of Tamil Nadu

Respondent : The Crompton Engineering Company (Madras) Limited

Advocate for Def. : C. Natarajan, Adv.

Advocate for Pet/Ap. : K.S. Bakthavathsalam, the Additional Government Pleader

Disposition : Petition allowed

Judgement :

Ismail, J.

1. This is a petition under Section 38 of the Tamil Nadu General Sales Tax Act (Act 1 of 1959) preferred by the State of Tamil Nadu against the order of the Sales

Tax Appellate Tribunal (Main Bench), Madras, dated 3rd February, 1971 and passed in T.A. No. 1582 of 1968. The respondent herein was assessed under the Central Sales Tax Act by an order dated 8th March, 1967. The respondent on 25th July, 1967, wrote to the assessing authority for rectification of certain alleged errors. The assessing authority on 15th April, 1968, passed an order stating that the request for the revision of the assessment could not be complied with as the assessment of the dealer for the year 1965-66 has already become final. Against this order, the dealer preferred an appeal to the Appellate Assistant Commissioner in Appeal No. 336 of 1968. The appellate authority also dismissed the appeal. Thereafter the dealer preferred a further appeal to the Sales Tax Appellate Tribunal, Madras and the Tribunal by its order dated 3rd February, 1971, allowed the appeal and purported to rectify the error said to have been present in the order of the assessing authority. It is to revise this order of the Tribunal, the present petition has been filed.

2. The principal and the only ground urged by the learned Additional Government Pleader in support of this revision petition is that no appeal lay against the order of the assessing authority to the Appellate Assistant Commissioner and, consequently, the Tribunal itself had no jurisdiction to interfere with the original order of the assessing authority. We may point out in this context that the provision for rectification of an order of the assessing authority is contained in Rule 5(9) of the Central Sales Tax (Madras) Rules, 1957, corresponding to Section 55 of the Tamil Nadu General Sales Tax Act, 1959 and there is no dispute with regard to the same. The point that no appeal lay against the order of the assessing authority declining to rectify the alleged error was taken before the Tribunal ; but the Tribunal held that such an appeal was available and for this purpose it purported to rely on the decision of this court in *Haji Abdul Shukoor and Company v. State of Madras* [1965] 16 S.T.C. 808. Before dealing with this decision, it is desirable to refer to the statutory provisions themselves.

3. There is no controversy that the actual legal position has to be ascertained with reference to the provisions contained in the Tamil Nadu General Sales Tax Act, 1959, as to whether an appeal is maintainable or not. It is Section 31 of the Act which deals with appeals to the Appellate Assistant Commissioner and Sub-

section (1) of that section enumerates the orders passed by the assessing authority against which an appeal lay to the Appellate Assistant Commissioner. An order under Section 55 is not one of the orders made appealable under Section 31. Consequently, any order passed by the assessing authority either rectifying the error or refusing to rectify the error would not be appealable under Section 31 to the Appellate Assistant Commissioner. It is in this context the decision of this court referred to above becomes relevant. In that case, the assessing authority actually allowed the application for rectification made by the assessee and, therefore, rectified the error said to have been present in its earlier order. The question for consideration was whether such an order was appealable or not. This court held that in substance such an order is an order of assessment within the meaning of Section 12 of the Act and, therefore, could be revised by the Deputy Commissioner under Section 32 of the 1959 Act. This question came to be considered again by this court in *India Cements Ltd. v. Deputy Commissioner of Commercial Taxes* [1972] 30 S.T.C. 516, even though the scope of the controversy there was rather narrow. In that case also it was an application under Rule 5(9) of the Central Sales Tax (Madras) Rules, 1957, which gave rise to further action. This court pointed out that in proceedings initiated under Rule 5(9) read with under Section 55(3) in respect of the revised turnover and the enhanced tax assessed thereon, the order passed would be an assessment order falling Section 12 of the Act and an appeal against that 'order would lie under Section 31 in so far as it related to the enhancement of the assessment or penalty and, in such an appeal, the assessee is not entitled to dispute the turnover assessed in the original assessment order which has become final by not appealing under Section 31 of the Act. We are of the opinion that neither of the above two decisions has any application whatever to a case where the assessing authority refuses to modify the alleged error and dismisses the application made for that purpose by the assessee. There is a clear and a real distinction between an order allowing an application for rectification and thereby rectifying or modifying the original order of assessment and an order rejecting an application for rectification. In one case, there is a positive action taken by the assessing authority which has the effect of destroying the finality of the original assessment order and thereby reopening the assessment order itself. On the other hand, in the latter case, the

assessing authority refuses to interfere with the original order and that order is allowed to remain intact. If so, there is no question of any assessment within the scope of Section 12 being made when the assessing authority refuses to interfere with the original order and allows that order to remain intact by rejecting the application for rectification of the alleged error. We may also point out in this context that by Tamil Nadu Act No. 31 of 1972, Sub-section (4) has been added to Section 55 of the Act, which states as follows:

The provisions of this Act relating to appeal and revision shall apply to an order of rectification made under this section as they apply to the order in respect of which such order of rectification has been made.

4. This express statutory provision makes it clear that the provisions relating to appeal and revision shall apply only when an order of rectification is made and not when the authority concerned refuses to pass an order of rectification. The above reasoning and conclusion of ours will be sufficient answer to the contention of the learned counsel for the respondent that Section 55 of the Act should be treated as a proviso to Section 12 as it were and, therefore, even in a case where the application for rectification is dismissed, an appeal must be deemed to be available.

5. Under these circumstances, we are clearly of the opinion that the Tribunal was in error in holding that an appeal was maintainable to the Appellate Assistant Commissioner of Commercial Taxes against the order of the assessing authority rejecting the application of the assessee for rectification of the alleged error. Consequently, we allow this revision petition and set aside the order of the Sales Tax Appellate Tribunal. In the view we have taken on the maintainability of the appeal itself to the Appellate Assistant Commissioner, we are not stating anything on the merits as to whether there was any error or not in the original order of the assessing authority. There will be no order as to costs in this petition.